In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-1357

WALTER R. REYNOLDS, PETITIONER

v.

UNITED STATES OF AMERICA

No. 71-1358

R. MARBURY STAMP, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioners were among six defendants charged in a thirteen-count indictment returned in the United States District Court for the District of Columbia.[1] Count I charged that the defendants conspired to obtain money by false pretenses and by forgery, in

[1] Co-defendant Freeman's petition for a writ of certiorari (No. 71-6391) was denied on June 7, 1972.

violation of 22 D.C. Code 1301 and 22 D.C. 1401. Counts II through XIII charged them with substantive violations of 22 D.C. Code 1301 (false pretenses). Following a joint trial, petitioners and three co-defendants were convicted on all counts. Petitioners were sentenced to varying terms of imprisonment.[2] The court of appeals affirmed in an exhaustive opinion (Pet. 71–1358, App. 1b–44b).

The charges arose as a result of a fraudulent scheme whereby petitioner and his confederates obtained refinancing of construction loans extended by the Eastern Savings and Loan Association to the Reynolds Construction Company to finance a housing project in McLean, Virginia.

The facts of the fraudulent scheme are not in dispute and are set forth in detail in the opinion of the court below (Pet. 71–1358, App. 6b–9b). In brief, the evidence shows that petitioner Reynolds, the president and owner of Reynolds Construction Company, had borrowed heavily from Eastern Savings and Loan Association over the years to finance a housing project in McLean. Eastern refused to grant additional loans

[2] Each petitioner was initially sentenced to a maximum of five years' imprisonment on Count I (conspiracy). However, petitioner Reynolds' sentence was thereafter reduced to six months' imprisonment with the balance suspended. Petitioner Stamp's sentence was reduced to four months' imprisonment, with the balance suspended, and two years' probation. As to petitioner Reynolds, the district court suspended imposition of sentence upon the substantive counts. Petitioner Stamp was sentenced to two years' probation on the substantive counts to run consecutively to the sentence imposed upon him on the conspiracy count.

to petitioner Reynolds' under-capitalized company because of Reynolds' failure to sell the houses in the project and thus liquidate existing construction loans owed to Eastern. Following this refusal, petitioner Reynolds and the other defendants devised a scheme whereby a number of mortgage applications from prospective purchasers of Reynolds' homes, supported by loan contracts and financial statements, were presented to Eastern by petitioner Stamp, a mortgage broker. In fact, no bona fide purchasers existed. Another conspirator, Freeman, a secretary in petitioner Reynolds' construction company, obtained signatures on conditional sales contracts from "straw" parties who signed for a fee, and by forging names he selected from a directory. The financial statements of these "straw" or nonexistent purchasers were either false or inflated. Relying on this information, Eastern issued mortgages which were used to liquidate the construction loans with the balance from the purported sales going to petitioner Reynolds' construction company.

Both petitioners contend, as they did below, (1) that the trial court's refusal to suppress certain evidence claimed to have been obtained as a result of fraud or trickery practiced by tax-agents was error of constitutional magnitude; (2) that the indictment was invalid since after it had been read to the grand jury and left with them for their deliberation they returned a true bill without any member having read the indictment; and (3) that the trial court improperly restricted cross-examination of two government wit-

nesses. Additionally, petitioner Stamp renews the contention that he was prejudiced by the time lapse in this case between the alleged criminal activity and the return of the indictment and from the date of the indictment to the date of the trial. These contentions are answered in the thorough opinion of the court of appeals on which we rely (see Pet. 71–1358, App. 9b–18b, 22b–41b). We would add that petitioner Stamp's pre-indictment delay contention does not on its facts raise the possible due process problems noted by this Court in *United States* v. *Marion,* 404 U.S. 307, 324. See opinion below, Pet. 71–1358, App. 17b.

We would further observe that since no papers belonging to petitioner Stamp relating to this case were examined or used, he has no standing to contend that Internal Revenue Service agents obtained access to the papers of other defendants through trickery or fraud (see opinion of the district court (Pet. 71–1358, App. 3a); see also, *Alderman* v. *United States,* 394 U.S. 165). In any event, as both opinions below demonstrate, this claim is without substance.

Nor, as contended by petitioner Reynolds (Pet. 71–1357, 15–16), does the pendency before this Court of *Couch* v. *United States,* No. 71–889, certiorari granted, April 3, 1972, afford a substantial basis for granting the petitions here. *Couch* involves the propriety of the use of a summons under Section 7602 of the Internal Revenue Code to gain access to a taxpayer's records in the possession of the taxpayer's bookkeeper in the course of a joint investigation concerned with both criminal and civil tax liability. Unlike *Couch,* there is

no question here of a taxpayer-accountant privilege. See *Donaldson* v. *United States,* 400 U.S. 517, 523. In fact, there was no use here of the summons procedure at all. Moreover, as the court below noted, the examination of the books of petitioner Reynolds' company was within the permissible scope of a civil tax audit "and unquestionably pertained to that audit" (Pet. 71–1358, App. 34b–35b). The court below further pointed out that the company's accountant, who had consented to the inspection, was free at any time to put a stop to the examination, but at no time chose to do so (*ibid*).

It is therefore respectfully submitted that the petitions for writs of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

JUNE 1972.

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